

**IN THE BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
STATE OF SOUTH DAKOTA**

IN RE: NOTICE OF FILING AND HEARING)	
BEFORE THE BOARD OF MINERALS AND)	PETITION TO INITIATE A
ENVIRONMENT OF THE DEPARTMENT OF)	CONTESTED CASE PURSUANT
ENVIRONMENT AND NATURAL RESOURCES)	TO S.D.C.L. § 1-26-27 AND
OF THE STATE OF SOUTH DAKOTA ON THE)	S.D. ADMIN. RULES
APPLICATIONS TO TRANSFER EXPLORATION)	§ 74:09:01:01, OR IN THE
NOTICES OF INTENT EXNI-363, EXNI-368,)	ALTERNATIVE, TO REQUEST
EXNI-418, EXNI-421, AND EXNI-423 FROM)	A DECLARATORY RULING
MINERAL MOUNTAIN RESOURCES LTD. TO)	PURSUANT TO S.D.C.L. § 1-26-15
HOLY TERROR MINING COMPANY)	
)	

COME NOW PETITIONERS CHRIS EYRE, JAMES PICOTTE, AND CHERYL ROWE and request that the Board of Minerals and Environment (“Board”) of the Department of Environment and Natural Resources of the State of South Dakota initiate a contested case concerning the Application to Transfer Exploration Notices of Intent EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423, from Mineral Mountain Resources Ltd. (“MMR”) to Holy Terror Mining Company, pursuant to S.D.C.L. § 1-26-27 and S.D. Admin. Rules § 74:09:01:01, or in the alternative to request a declaratory ruling, pursuant to S.D.C.L. § 1-26-15.

PRELIMINARY STATEMENT

1. This action concerns an Application to Transfer Exploration Notices of Intent EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 (“Application”) from a foreign corporation that is not authorized to do business in this State to a domestic corporation.

2. Petitioners submit that such a transfer would be contrary to law because exploration notices of intent (“EXNI’s”) issued to (or purportedly held by) a foreign corporation are void and invalid, and accordingly, not eligible for transfer.

3. Petitioners submit that the Board should treat this matter as a contested case, as required by S.D.C.L. § 1-26-27 and as authorized by S.D. Admin. Rules § 74:09:01:01, and permit Petitioners to participate fully in the proceeding.

4. Petitioners submit that the Board should deny the Application because the requested transfer would be arbitrary, capricious, and contrary to the laws of the State, including S.D.C.L. § 45-6C-53.

5. In the alternative, Petitioners ask the Board to issue a declaratory ruling, pursuant to S.D.C.L. § 1-26-15, that a transfer of an EXNI under circumstances such as these would be arbitrary, capricious, and contrary to the laws of the State, including S.D.C.L. § 45-6C-53.

PETITIONERS' INTEREST

6. Petitioner Chris Eye is a member of the Cheyenne and Arapaho Tribes. He owns property outside Keystone, South Dakota, in Custer County, approximately one mile from Battle Creek.

7. Petitioner James Picotte is an enrolled member of the Cheyenne River Sioux Tribe and a resident of the Cheyenne River Indian Reservation in South Dakota.

8. Petitioner Cheryl Rowe is a resident of Rapid City, South Dakota.

9. Petitioners Eyre and Picotte consider the Black Hills and land, water, and other natural resources in the Black Hills to be sacred.

10. Petitioners Eyre and Picotte pray, perform or participate in religious ceremonies, and receive divine wisdom in the Black Hills.

11. Petitioners Eyre and Picotte consider the proposed gold exploration by Holy Terror Mining Company to be a desecration of the sacred Black Hills. The proposed gold exploration will

interfere with their ability to worship, perform and participate in ceremonies, and receive divine wisdom in the Black Hills.

12. All Petitioners have an interest in protecting the land, water, and other natural resources in the Black Hills. They are particularly concerned that gold exploration and gold mining will directly endanger them and others dependent on threatened land, water, and natural resources. They note that land, water, and natural resources in the Black Hills have been contaminated by gold exploration and gold mining in the past.

13. Petitioners will be aggrieved and their pecuniary and other interests will be adversely affected by the proposed Transfer Exploration Notices of Intent EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423.

14. Petitioners assert that the proposed gold exploration will harm the land, natural resources, and water in the Black Hills, causing noise and disruption, and interfering with the solitude of the Black Hills.

15. If the transfer is approved, Petitioners will suffer the denial of some claim of right, either of person or property, including but not limited to their right to a clean environment in the Black Hills and a clean flow of water in Battle Creek and their right to enforcement of South Dakota laws prohibiting unauthorized business and transactions by foreign corporations.

16. The proposed gold exploration will harm the property value of Petitioners Eyre.

17. Past experience with gold mining in the Black Hills has resulted in polluted land and waters, including EPA Superfund sites, disturbance of sacred sites and natural vistas.

STATEMENT OF RELIEF REQUESTED

18. Petitioners seek a decision from the Board to treat the Application as a contested case and to apply the provisions in S.D.C.L. ch. 1-26 concerning contested cases, as required by S.D.C.L. § 1-26-27.

19. Petitioners seek a decision from the Board denying the Application and declaring that the requested Transfer Exploration Notices of Intent EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 from MMR to Holy Terror Mining Company is or would be arbitrary, capricious, and contrary to law in that, among other things:

a. EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 are void *ab initio*, invalid, and incapable of being transferred because they were issued (or previously transferred) to MMR, a foreign corporation organized and existing under the laws of British Columbia, Canada, and that corporation did not, and does not, have a certificate of authority from the Office of the Secretary of State to transact business in the State of South Dakota, pursuant to S.D.C.L. § 47-1A-1501, and was not, and is not, eligible to file a notice of intent to conduct a mineral exploration operation (or an application for the transfer of an exploration notice of intent (“EXNI”)) or to receive permission to engage in mineral exploration in South Dakota, under S.D.C.L. ch. 45-6C or otherwise; and

b. EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 are void, invalid, and incapable of being transferred because they were issued (or previously transferred) to MMR based on erroneous information and the erroneous premise submitted by MMR that it had the authority to conduct an exploration operation in South Dakota; and

c. Exploration Notices of Intent EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 are void, invalid, and incapable of being transferred because they did

not comply with the requirements of S.D.C.L. ch. 45-6C in that, among other things, MMR did not have “the authority to conduct an exploration operation on the lands described” in the applications, as required by S.D.C.L. § 45-6C-7; and

d. EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 may not be transferred pursuant to S.D.C.L. § 45-6C-53, because the mineral exploration operation is not in compliance, or capable of being brought into compliance, with all applicable local, state, and federal laws pertaining to the operation before the purported transfer of the EXNI’s because MMR did not, and does not, have a certificate of authority from the Office of the Secretary of State to transact business in the State of South Dakota, pursuant to S.D.C.L. § 47-1A-1501, and was not, and is not, eligible to file a notice of intent to conduct a mineral exploration operation (or an application for the transfer of an EXNI) or to receive permission to engage in mineral exploration in South Dakota, under S.D.C.L. ch. 45-6C or otherwise, and because the EXNI is otherwise void, invalid, and incapable of being transferred for the reasons set forth herein; and

e. EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 may not be transferred because such a transfer is or would be contrary to the public interest.

20. In the alternative, Petitioners seek a declaratory ruling that the Board may not transfer an EXNI, pursuant to S.D.C.L. § 45-6C-53, if:

a. The EXNI was improvidently issued (or transferred) to a foreign corporation that did not, and does not, have a certificate of authority from the Office of the Secretary of State authority to transact business in the State of South Dakota, pursuant to S.D.C.L. § 47-1A-1501, and was not, and is not, eligible to file a notice of intent to conduct a mineral exploration operation (or an application for the transfer of an EXNI) or to receive

permission to engage in mineral exploration in South Dakota, under S.D.C.L. ch. 45-6C or otherwise;

b. The EXNI was issued (or transferred) to a foreign corporation based on erroneous information and an erroneous premise submitted by the corporation that it had the authority to conduct an exploration operation in South Dakota;

c. The EXNI did not comply with the requirements of S.D.C.L. ch. 45-6C in that, among other things, the corporation to which the EXNI was originally issued (or transferred) did not have “the authority to conduct an exploration operation on the lands described” in the application, as required by S.D.C.L. § 45-6C-7; and/or

d. The mineral exploration operation is not in compliance, or capable of being brought into compliance, with all applicable local, state, and federal laws pertaining to the operation before the purported transfer of the EXNI because the EXNI was issued (or previously transferred) to a foreign corporation that did not, and does not, have a certificate of authority from the Office of the Secretary of State authority to transact business in the State of South Dakota, pursuant to S.D.C.L. § 47-1A-1501, and was not, and is not, eligible to file a notice of intent to conduct a mineral exploration operation (or an application for the transfer of an EXNI) or to receive permission to engage in mineral exploration in South Dakota, under S.D.C.L. ch. 45-6C or otherwise, and because the EXNI is otherwise void, invalid, and incapable of being transferred for the reasons set forth herein.

STATEMENT OF RELEVANT FACTS

21. MMR is a foreign corporation organized and existing under the laws of British Columbia, Canada.

22. MMR does not, and at all times relevant to this action did not, have a certificate of authority from the Office of the Secretary of State to conduct business in South Dakota, pursuant to S.D.C.L. § 47-1A-1501.

23. MMR is not, and at all times relevant to this action was not, eligible to file a notice of intent to conduct a mineral exploration operation (or an application for the transfer of an EXNI) or to receive permission to engage in mineral exploration in South Dakota, under S.D.C.L. ch. 45-6C or otherwise.

24. In a prior proceeding (concerning the transfer of EXNI-427 from MMR to another domestic corporation), DENR Engineer Eric Holm acknowledged that MMR is “not registered to do business in South Dakota.”

25. In the same proceeding, MMR acknowledged, through counsel, that MMR is not “qualified to do business in the state of South Dakota.”

26. The Supreme Court of the State of South Dakota has noted that the business and contracts of a foreign corporation that does not have authority to transact business in the State are void:

foreign corporations are prohibited from transacting business therein until they have complied with the terms upon which permission is granted, and that contracts in violation of a statute are void.

American Copying Co. v. Eureka Bazaar, 108 N.W. 15, 16 (S.D. 1906) (citation omitted).

27. In *American Copying Co.*, the court discussed with approval the case of *Cincinnati Mutual Health Assurance Co. v. Rosenthal*, 55 Ill. 85 (1870), in which the court held that, under a statute prohibiting foreign insurance companies from transacting business in the State without first producing a certificate of authority from the auditor of the State:

a promissory note, given to an insurance company which had not complied with the statute, was void, and could not be enforced When the Legislature

prohibits an act, or declares that it shall not be lawful to perform it, every rule of interpretation must say that the Legislature intended to interpose its power to prevent the act, and, as one of the means of its prevention, that the courts shall hold it void. This is as manifest as if the statute had declared that it should be void.

Id. at 18. *See* 36 AM. JUR. 2D FOREIGN CORPORATIONS § 253 (Feb. 2018) (discussing *American Copying Co.* and noting that “[a] statute prohibiting a noncomplying corporation from suing in the state courts on any contract is held by some courts to render the contract void and unenforceable by the corporation even after it has complied with the statute”).

28. In *Mandel Bros. v. Henry O’Neill, Inc.*, 69 F.2d 452 (8th Cir. 1934), the court held that, under South Dakota law, the acts of a foreign corporation that has not complied with the statutory prerequisites to do business in the State are void and unenforceable. The court affirmed the holding of trial court:

That by reason of appellant’s failure to comply with the laws of South Dakota relating to foreign corporations the promissory notes in suit were void and unenforceable.

Id. at 454. *See also id.* at 457.

29. Because MMR was not authorized to transact business in South Dakota, under S.D.C.L. § 47-1A-1501, its EXNI’s are invalid, void, and incapable of being transferred to another operator.

30. The Board’s issuance (or previous transfer) of EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 to MMR was improvident and contrary to statute.

31. Holy Terror Mining Company has filed an application (or applications) for transfer of EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 from MMR to Holy Terror Mining Company.

32. Holy Terror Mining Company is a domestic corporation organized and existing under the laws of the State of South Dakota.

33. Petitioners have an interest in protecting the land, natural resources, and water in the Black Hills.

34. Petitioners assert that the mineral exploration authorized by the transfer of EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 to Holy Terror Mining Company will pollute or otherwise adversely affect the land, natural resources, and water in the Black Hills and will pollute or otherwise adversely affect the clean flow of water in Battle Creek.

35. The environmental concerns of Petitioners are corroborated by prior experience. MMR was issued a Notice of Violation from DENR on or about March 22, 2013, for causing an unauthorized discharge of drilling fluids to enter and degrade the natural quality of the water in Battle Creek in connection with drilling operations near Keystone in the Black Hills.

36. If EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 are transferred to Holy Terror Mining Company, Petitioners will suffer the denial of some claim of right, either of person or property, including but not limited to their right as residents of Rapid City, South Dakota, to a clean environment and a clean flow of water in Battle Creek and their right to enforcement of South Dakota statutes prohibiting unauthorized business practices and transactions by foreign corporations.

37. The mineral exploration authorized by the transfer of EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 will pollute or otherwise adversely affect the land, natural resources, and water in the Black Hills and will pollute or otherwise adversely affect the clean flow of water in Battle Creek.

38. The Board has given notice that it will hold a hearing on September 20, 2018, on the application (or applications) for the transfer of EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423.

STATEMENT OF LEGAL AUTHORITY

39. The Board has jurisdiction to hold a contested case hearing in this matter pursuant to S.D.C.L. chs. 1-26 and 45-6C, S.D.C.L. §§ 1-26-27 and 45-6C-53, and S.D. Admin. Rules § 74:09:01:01.

40. The Board has jurisdiction to issue a declaratory ruling pursuant to S.D.C.L. ch. 1-26 and S.D.C.L. § 1-26-15.

41. Because the Board requested a hearing in this matter, the provisions of S.D.C.L. ch. 1-26 concerning contested cases apply, as dictated by to S.D.C.L. § 1-26-27, and the Board should treat this matter as a contested case, allowing for intervention and full participation by Petitioners and others who have an interest in the matter.

42. The term “contested case” is defined as “a proceeding, including ... licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency having an opportunity for hearing” S.D.C.L. § 1-26-1(2).

43. S.D.C.L. § 1-26-27 provides that: “When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, or an applicant, a party or an agency requests a hearing, the provisions of this chapter concerning contested cases apply.”

44. The term “license” is defined as “the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.” S.D.C.L. § 1-26-1(4).

45. DENR should treat the transfer of the Exploration Notices of Intent EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 as a contested case. All of the elements of a contested case are satisfied in that:

a. The legal rights, duties, or privileges of Holy Terror Mining Company are required by law, specifically S.D.C.L. § 45-6C-53, to be determined by the Board. *See* S.D.C.L. § 1-26-1(2); and

b. AN EXNI is a license, within the meaning of S.D.C.L. § 1-26-1(4), in that it is required prior to the commencement of mineral exploration. *See* S.D.C.L. § 45-6C-6; and

c. The transfer of an EXNI is the equivalent of the “grant ... of a license,” within the meaning of S.D.C.L. § 1-26-27, since the transfer grants “permission” to the transferee to engage in gold exploration under the terms and conditions set forth in the EXNI. Under state law, gold exploration may only take place under the “exploration permit requirements” of Chapter 45-6C. *See* S.D.C.L. § 45-6C-5. Those requirements include the filing and approval of an exploration notice of intent. *See* S.D.C.L. §§ 45-6C-6 to 45-6C-13; and

d. The transfer of EXNI-363, EXNI-368, EXNI-418, EXNI-421, and EXNI-423 will be made by the Board, if at all, after it had “an opportunity for hearing.” *See* S.D.C.L. § 1-26-1(2); and

e. The Board requested and will conduct a hearing on the transfer on September 20, 2018. *See* S.D.C.L. § 1-26-27.

RELEVANT STATUTES

46. S.D.C.L. ch. 1-26 sets forth the Administrative Procedures and Rules governing administrative agencies in South Dakota, including the Board.

47. S.D.C.L. § 1-26-1 concerns licenses and license proceedings, among other things.

48. S.D.C.L. § 1-26-15 concerns requests for declaratory rulings by agencies.

49. S.D.C.L. § 1-26-27 concerns the treatment of license proceedings as contested cases.

50. S.D.C.L. § 45-6C-53 concerns transfers of exploration notices of intent.

51. S.D. Admin. Rules § 74:09:01:01 concerns petitions to initiate contested cases in matters before the Board.

PERSONS AFFECTED

52. The persons known to Petitioners to be affected by this Petition are Mineral Mountain Resources Ltd. and Holy Terror Mining Company.

53. Petitioners certify that on September 19, 2018, they caused true and accurate copies of this Petition to be served, by U.S. mail, postage prepaid, facsimile, and electronic mail upon the following:

Mineral Mountain Resources Ltd.
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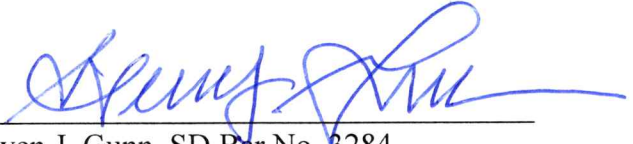
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WHEREFORE, Petitioners request that the Board initiate a contested case concerning the Application, pursuant to S.D.C.L. § 1-26-27 and S.D. Admin. Rules § 74:09:01:01, and deny the Application, or in the alternative, to issue a declaratory ruling, pursuant to S.D.C.L. § 1-26-15, and declare that a transfer of an EXNI under the present circumstances would be arbitrary, capricious, and contrary to law, including S.D.C.L. § 45-6C-53.

Dated: September 19, 2018

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By: _____


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